(17,359.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 257.

COLUMBUS WINCHESTER MOTES, ALIAS CHESS MOTES, ET AL., PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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1 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, September Term, 1898.

The grand jurors of the United States, duly elected, empannelled, sworn, and charged according to law to inquire for the body of the said southern division of the northern district of Alabama, upon their oaths present:

1st. That heretofore, to wit, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, in the said southern division of the northern district of Alabama, before the finding of this indictment, and within the jurisdiction of said court, in the county of Talladega, in the State of Alabama, Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson—whose Christian name is to the said grand jurors otherwise unknown—a citizen of the United States, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of his having exercised the same, in that he, the said W. A. Thompson, had on, to wit, about the 2nd day of October, eighteen hundred and ninety-seven, reported and informed one Robert A. Moseley, a United States commissioner in and for the northern district of Alabama, that Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes had on, to wit, about the months of July, August, September, October, November, and December, in the year eighteen hundred and ninety-five, violated the internal-revenue laws of the United States by unlawfully carrying on the business of distillers without having given bond, as required by law, and having in their possession and custody and under their control a still and distilling apparatus, set up without having the same registered, as required by law; and the conspiracy hereinbefore charged was formed by the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, for the purpose of injuring, oppressing, threatening, and intimidating the said W. A. Thompson, a citizen of the United States, as aforesaid, because of his having exercised his said rights and privileges secured to him as aforesaid in reporting and informing the said Robert A. Moseley, a United States commissioner as aforesaid, of the violation of the internal-revenue laws of the United States, as aforesaid, by the said Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes, and in the furtherance of said conspiracy so formed and for the purpose aforesaid and to effect the object thereof the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship,

alias Dodge Blankenship, alias Dodger Blankenship, did on, to wit, about the 14th day of March, eighteen hundred and ninety-eight, go upon the highway and did then and there, in the county of Talladega, in the State of Alabama, in the southern division of the northern district of Alabama, and within the jurisdiction of said court, unlawfully, wilfully, premeditatedly, deliberately, and with malice aforethought kill and murder the said W. A. Thompson by shooting him with a gun or guns, because he, the said W. A. Thompson, had reported to the said Robert A. Moseley, 2 United States commissioner as aforesaid, said violation of the internal-revenue laws of the United States by the said Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

2nd. And the grand jurors aforesaid upon their oaths aforesaid do further present that at the time and place aforesaid and within the jurisdiction aforesaid the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson, whose Christian name is to the said grand jurors otherwise unknown, a citizen of the United States, because of his having exercised a right and privilege secured to him by the Constitution and laws of the United States, to wit, because the said W. A. Thompson had on, to wit, about the 2nd day of October, eighteen hundred and ninety-seven, reported and informed one Robert A. Moseley, a United States commissioner in and for the northern district of Alabama, that Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes did at divers times during the year eighteen hundred and ninety-five violate the internal-revenue laws of the United States by unlawfully carrying on the business of distillers without having given bond as required by law, and did have in their possession and custody and under their control a still and distilling apparatus set up without having the same registered as required by law, and in forming the said conspiracy as aforesaid, and thereby violating the statute in such case made and provided; and in furtherance of said conspiracy so formed for the purpose aforesaid and to effect the object thereof, the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did at the time and place aforesaid and within the jurisdiction aforesaid unlawfully, wilfully, premeditatedly, deliberately, and with malice aforethought kill the said W. A. Thompson by shooting him with guns, because he, the said W. A. Thompson, had exercised the right and privilege aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

3rd. And the grand jurors aforesaid upon their oaths aforesaid do further present that at the time and place aforesaid and within

the jurisdiction aforesaid the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson, whose Christian name is to the said grand jurors otherwise unknown, a citizen of the United States, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of his having exercised the same, in that he, the said W. A. Thompson, had on, to wit, about the 8th day of March, 1898, informed one William C. Hanlin, a deputy collector of internal revenue of the United States in the southern division of the northern district of Alabama, that said Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, and one Smith, whose Christian name is to the grand jurors unknown, did on or about the 8th day of March, 1898, violate the internal-revenue laws of the United States by unlawfully carrying on the business of distillers without having given bond as required by law, and the conspiracy hereinbefore charged was formed by the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, for the purpose of injuring, oppressing, threatening, and intimidating the said W. A. Thompson because of his having exercised his said right and privilege, secured to him as aforesaid, in reporting to and informing said William C. Hanlin, deputy collector of internal revenue for the United States as aforesaid, of said violation of the internal-revenue laws of the United States as aforesaid, and for the purpose aforesaid, and to effect the object of the said conspiracy above charged, the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did, at the time and place aforesaid and within the jurisdiction aforesaid, go upon the highway, and did then and there, unlawfully, wilfully, premeditatedly, deliberately, and with malice aforethought, kill and murder the said W. A. Thompson by shooting him with a gun, because he, the said W. A. Thompson, had reported to and informed the said William C. Hamlin, deputy collector of internal revenue as aforesaid, — said violation of the internal-revenue laws of the United States by the said Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, and one Smith, whose Christian name is to the grand jurors unknown as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

3

4th. And the grand jurors aforesaid upon their oaths aforesaid do further present that at the time and place aforesaid and within the jurisdiction aforesaid the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias

Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson, whose Christian name is to the grand jurors otherwise unknown, a citizen of the United States, because of his having freely exercised a right and privilege secured to him by the Constitution and laws of the United States, in that he, the said W. A. Thompson, on or about the 8th day of March, 1898, had reported to and informed one William C. Hanlin, a deputy collector of internal revenue for the United States in the southern division of the northern district of Alabama, that said Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, and one Smith, whose Christian name is to the grand jurors unknown, did on, to wit, about the 8th day of March, 1898, violate the internal-revenue laws of the United States, by unlawfully carrying on the business os distillers without having given bond as required by law, and in the act of forming said conspiracy above charged, and thereby violating the provisions of the statute in such case made and provided, and for the purpose aforesaid and in furtherance of the said conspiracy, and to effect the object thereof, and because the said W. A. Thompson had so exercised his said right as aforesaid, the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did, at the time and place aforesaid and within the jurisdiction aforesaid, unlawfully, wilfully, premeditatedly, deliberately, and with malice aforethought kill the said W. A. Thompson by shooting him
4 with a gun, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

5th. The grand jurors aforesaid upon their oaths aforesaid do further present that on, to wit, about the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, within the jurisdiction aforesaid, in the county of Talladega, in the State of Alabama, Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate W. A. Thompson, whose Christian name is to the grand jurors otherwise unknown, a citizen of the United States, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States, and because of his — exercised the same, in that he, the said W. A. Thompson, had on, to wit, about the month of November, 1897, reported to and informed the grand jurors of the United States elected, empannelled, sworn, and charged to enquire for the body of the southern division of the northern district of Alabama, in the city of Birmingham, county of Jefferson, State of Alabama, that Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes did on, to wit, about the months of July, August, September, October, November, and December, 1895, in the county of Talladega, State of Alabama, in the southern division of the northern district

of Alabama, and within the jurisdiction of this court, violate the internal-revenue laws of the United States by unlawfully carrying on the business of distillers without having given bond, as required by law, and did have in their custody and under their control a still and distilling apparatus set up without having the same registered, as required by law, and the conspiracy hereinbefore charged was formed by the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, for the purpose of injuring, oppressing, threatening, and intimidating the said W. A. Thompson, a citizen of the United States, because of his having exercised his said rights and privileges secured to him, as aforesaid, in reporting and informing the grand jurors aforesaid of the violation of the internal-revenue laws of the United States, as aforesaid, and in furtherance of the conspiracy so formed and for the purpose aforesaid and to effect the object thereof the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did on, to wit, about the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, go upon the highway and did then and there, at the time and place aforesaid, unlawfully, willfully, premeditatedly, deliberately, and with malice aforethought kill and murder the said W. A. Thompson by shooting him with a gun because he, the said W. A. Thompson, had reported to and informed the said grand jurors of the United States, as aforesaid, of the violation of the internal-revenue laws of the United States, as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

5 6th. And the grand jurors aforesaid upon their oaths aforesaid do further present that at the time and place aforesaid and within the jurisdiction aforesaid the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankinship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson, whose Christian name is to the grand jurors otherwise unknown, a citizen of the United States, because of his having freely exercised a right and privilege secured to him by the Constitution and laws of the United States, in that he, the said W. A. Thompson, had during the month of November, 1897, appeared as a witness before the grand jury of the United States for the southern division of the northern district of Alabama and informed the grand jury aforesaid of certain violations of the internal-revenue laws of the United States by Bob Taylor, Chess Motes, Ben Morris, Jasper Robinson, and Walter Motes in carrying on the business of distillers without having given bond, as required by law, and in the act of forming the said conspiracy and thereby violating the provision of the statute in such case made and provided and for the purpose aforesaid of

injuring, oppressing, threatening, and intimidating the said W. A. Thompson because of his having so exercised said right and privilege, and in furtherance of said conspiracy and to effect the object thereof the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, at the time and place aforesaid and within the jurisdiction of said court did then and there unlawfully, willfully, premeditatedly, deliberately, and with malice aforethought kill the said W. A. Thompson by shooting him with a gun, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

7th. And the grand jurors aforesaid do further present that on the 14th day of March, 1898, in the southern division of the northern district of Alabama, before the finding of this indictment and within the jurisdiction of said court, in the county of Talladega, Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did conspire to injure, oppress, threaten, and intimidate one W. A. Thompson, whose Christian name is to the grand jurors otherwise unknown, a citizen of the United States, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of his having exercised the same, in that he, the said W. A. Thompson, had on, to wit, about the 12th day of March, 1898, appeared before the United States district court for the southern division of the northern district of Alabama, at Birmingham, Alabama, as a witness, in obedience to a subpœna theretofore served on him to appear therein as a witness in the case of The United States against Ben Morris, the same being numbered 1370 on the docket of said court, and in which case the said Ben Morris was charged with and indicted for carrying on the business of a distiller without having given bond as required by law, and the conspiracy hereinbefore charged was formed by the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge ——, alias Dodger Blanken-
6 ship, for the purpose of injuring, oppressing, threatening, and intimidating the said W. A. Thompson because of his having exercised his said right and privilege secured to him, as aforesaid, in reporting and appearing in the said United States district court on the 12th day of March, 1898, as aforesaid, as a witness for the Government of the United States, duly and legally subpœnaed so to appear in the said case of the United States against Ben Morris, and for the purpose aforesaid and to effect the object thereof the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, did on, to wit, in the county of Talladega, in the State of Alabama, in the southern division of the northern district of Alabama, and within the jurisdiction of the said court, unlawfully, willfully, pre-

meditatedly, deliberately, and with malice aforethought kill and murder the said W. A. Thompson by shooting him with a gun, because he, the said W. A. Thompson, had exercised his said right secured to him as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WILLIAM VAUGHAN,
United States Attorney.

A true bill.
BEN WEIL,
Foreman of Grand Jury.

Filed September 13th, 1898.

N. W. TRIMBLE, *Clerk.*
WILLIAM VAUGHAN,
U. S. Attorney.

Witnesses: Bob Taylor, Jesse Phillips, B. W. Bell.

Violation sec. 5508 R. S.

7 In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, September Term, 1898.

THE UNITED STATES
vs.
COLUMBUS WINCHESTER MOTES, alias CHESS MOTES; WALTER W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship.

To the defendants in the above cause:

You are hereby notified that the above case is set for trial on the 20th day of September, 1898, and the following witnesses will be produced on the trial for the purpose of proving the indictment, and each of said witnesses resides and his place of abode is at the place set opposite his said name:

Robert A. Mosely, Birmingham, Jefferson Co.
William C. Hanlin, Woodlawn, Jefferson Co., Ala.
Sam. M. Hamby, Birmingham, Jefferson county, Ala.
Edward T. Broadway, Birmingham, Jefferson county, Ala.
Anderson Brooks Mitchell, Childersburg, Talladega Co., Ala.
Cornelia E. Thompson, Sylacauga, Talladega Co., Ala.
Leander L. Thompson, Sylacauga, Talladega Co., Ala.
Tolley Thompson, Sylacauga, Talladega, Ala.
Daniel M. Thompson, Weogufka, Coosa county, Ala.
Mrs. Ellen Hyde, Fayetteville, Talladega, Alabama.
Mrs. Mary Taylor, Fayetteville, Talladega Co., Ala.
Cobb Morris, Fayetteville, Talladega Co., Ala.
Jesse Phillips, Sylacauga, Talladega Co., Ala.
James H. Lane, Sylacauga, Talladega Co., Ala.

Dr. J. E. Pierson, Sylacauga, Talladega Co., Ala.
Benjamin B. Morris, Fayetteville, Talladega Co., Ala.
Tom Motes, Fayetteville, Talladega Co., Ala.
Ad Smith, Weogufka, Coosa Co., Ala.
Levi Butler, Fayetteville, Talladege Co., Ala.
Matt Burks, Weogufka, Coosa county, Ala.
Susie Burks, Weogufka, Coosa county, Ala.
Jim Green, Weogufka, Coosa county, Ala.
Tom White, Sylacauga, Talladega Co., Ala.
Henry Blackmon, Sylacauga, Talladega Co., Ala.
Willie Hughes, Woegufka, Coosa Co., Ala.
Mrs. Kate Wallace, Sylacauga, *Coosa* Co., Ala.
Jim Wallace, Sylacauga, Talladega Co., Ala.
J. F. Martin, alias Squire Martin, Sylacauga, Talladega Co., Ala.
Tink Morris, Fayetteville, Talladega Co., Ala.
Bushrod W. Bell, Montgomery, Montgomery Co., Ala.
William Robert Taylor, Fayetteville, Talladega Co., Ala.
Ed May, Sylacauga, Talladega Co., Ala.

You are hereby further notified that the following jurors compose the special venire from which, together with the regular venire, a jury will be drawn to try said case; the said jurors reside and their place of abode are the places the names of which appear opposite the names of the jurors:

8 *Special Venire.*

R. C. Rector, Vernon, Lamar county.
James C. Knight, Hurley, Cherokee county.
Mack Cumming, c., Gadsden, Etowah county.
J. F. McNeal, Sloen, Blount county.
Hope Hargrove, Cottondale, Tuscaloosa county.
Noah McGhee, Centre, Cherokee county.
George P. Jones, Aldrich, Shelby county.
John Trimble, Bodka P. O., Sumter county.
William Allen, Woodstock, Bibb county.
Charles A. Vildabill, Avondale, Jefferson county.
Thomas Y. Daniels, Taff, Cherokee county.
S. A. Ryland, Adville, Blount county.
W. H. McElrath, Spring Garden, Cherokee county.
Henry P. Stewart, c., Piedmont, Calhoun county.
William Leonard, c., Pleasant Ridge, Green county.
J. E. James, Jamesville, Bibb county.
John Inge, c., Ramsey, Sumter county.
Zack Story, c., Mantau, Greene county.
Marcus T. Martin, Anniston, Calhoun county.
Nick Carnes, Oneonta, Blount county.
J. E. Ruffin, Helena, Shelby county.
Owen Nealy, c., Ashville, St. Clair county.
James Donovan, Birmingham, Jefferson county.
John M. Satterfield, Birmingham, Jefferson county.
Sidney W. Lee, Birmingham, Jefferson county.

Charles W. Frobus, Birmingham, Jefferson county.
W. H. Shepherd, Berry Station, Fayette county.
W. R. Hall, c., Horse Creek, Walker county.
George Washington, c., Birmingham, Jefferson county.
Joseph C. Lindsay, c., Anniston, Calhoun county.
R. H. Hudson, Coalberg, Jefferson county.
C. W. Ewing, Gadsden, Etowah county.
John McGee, c., Bangor, Blount county.
C. J. Geary, Eutaw, Greene county.
Rhodes H. Alston, c., Galera, Shelby county.

9 You are hereby further notified that the following persons compose the regular venire, the places of abode of whom are set opposite their names:

Regular Venire.

Elijah Smoot, Hamner P. O., Sumter county, Alabama.
James D. Hilton, Carbon Hill, Walker county, Alabama.
Benjamin F. Ginnings, Rock Run, Cherokee county, Alabama.
T. B. Garren, Tidmore, Blount county, Alabama.
Sam. Gilmore, Columbiana, Shelby county, Alabama.
George W. Phillips, Wynville, Blount county, Alabama.
Frank N. Jeffries, Fayette, Fayette county, Alabama.
John P. Clements, North Port, Tuscaloosa county, Alabama.
Monroe McAnally, Blount Springs, Blount county, Alabama.
Columbus C. Files, Hugent, Fayette county, Alabama.
Porter G. Pendergrass, Fort Payne, De Kalb county, Alabama.
Richard Kemp, Birmingham, Jefferson county, Alabama.
Joe Lawrence, Gadsden, Etowah county, Alabama.
James H. Morrow, Trussville, Jefferson county, Alabama.
W. Spencer Jack, Stuart's Station, Hale county, Alabama.
W. R. Lollar, Sr., Oregonia, Tuscaloosa county, Alabama.
George D. Fowler, Liberty, Blount county, Alabama.
William H. Hunter, Birmingham, Jefferson county, Alabama.
Jackson A. Burgess, Weavers, Calhoun county, Alabama.
Frank H. Hamilton, Birmingham, Jefferson county, Alabama.
Benjamin F. Wilson, Round Mountain P. O., Cherokee county, Alabama.
Dempsey Winn, Livingston, Sumter county, Alabama.
Newton J. Stephens, Calvin's Gap, Calhoun county, Alabama.
Henry W. Fowlkes, Birmingham, Jefferson county, Alabama.
George Flemming, Lawrence Station, Cherokee county, Alabama.
Samuel Snoddy, Jasper, Walker county, Alabama.
William H. Bryan, Birmingham, Jefferson county, Alabama.
Marshall R. Murphy, Oneonta, Blount county, Alabama.
James Moore, Tuscaloosa, Tuscaloosa county, Alabama.
John McCoy, Birmingham, Jefferson county, Alabama.

You are hereby further notified that a correct copy of the indictment against you in this cause is hereby served on you.

WILLIAM VAUGHAN,
United States Attorney.

10 *Marshal's Return.*

Filed in marshal's office Sept. 15th, 1898.

I hereby certify that I delivered to and left with the following-named defenda-ts, to wit, Walter W. Motes, Columbus Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, a true attested copy of the with- notice list of juro-s this 15th day of Sept., 1898.

Received in marshal's office this the 15th day of Sept., 1898.

____ ____,
U. S. Marshal.

I have executed the within papers by serving on each of the said defendants, Columbus Winchester Motes, alias Chess Motes: Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge, alias Dodger Blankenship, a true and attested copy of the within notice, signed by the U. S. attorney, including a list of the witnesses to be produced on the trial, together with the places of abode; a list of the special venire heretofore drawn for the trial of this case, the regular venire, and special juries, on this 15th day of Sept., 1898.

D. N. COOPER, *U. S. M.*,
By J. L. WHITE, *Office Deputy.*

$12.00.

Returned and filed Sept. 15, 1898.

N. W. TRIMBLE, *Clerk.*

11 *Motion in Arrest of Judgment.*

In the Circuit Court of the United States, Sou. Div., Nor. District of Alabama.

THE UNITED STATES }
—
WALTER W. MOTES ET ALS. }

Now comes the defendants in above case after the rendition of the verdict of the jury finding them guilty as charged in the indictment and before judgment and sentence, and moves the court to arrest the judgment in this case upon the ground that said indictment charges the defendants in each count thereof with two separate and distinct offenses not of the same class.

2nd: That said indictment charges the defendants with two separate and distinct offenses, viz: Said indictment charges the defendants with conspiracy, in violation of section 5508 of the Revised Statute of the United States, which prescribes a punishment of not more than 10 years' imprisonment, and in the same count, in each and every count of said indictment, the defendants are charged

with murder in the first degree, which offense is not of the same class as the other offense charged in the indictment.

LEE COWART,
Att'y for Def'ts.

Filed Oct. 4th, 1898.

N. W. TRIMBLE, *Clerk.*

12 In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

UNITED STATES
vs.
WALTER W. MOTES ET ALS.

Now come the defendants in the above case and moves the court to set aside the verdict of the jury and grant a new trial to the defendants upon the following grounds, to wit:

1st.

Because the evidence did not warrant a conviction.

2d.

Because the verdict of the jury was contrary to the evidence.

3d.

Because the verdict of the jury was contrary to the weight of the evidence.

4th.

Because said verdict was rendered by the jury on the evidence of an accomplice and there was no evidence given in said trial as against defendants John Littlejohn, Mark Grant Blankenship, Walter W. Motes, and Jasper Robinson to corroborate the evidence of said accomplice.

5th.

Because the defendants have discovered new evidence since the trial of said case.

6th.

Because the court erred in allowing the testimony of the absent witness Taylor to go before the jury.

7th.

Because the court erred in allowing the testimony of the absent witness Taylor to go before the jury as against Walter W. Motes and Jasper Robinson, the two defendants who were not on trial at the time the testimony of said Taylor was taken before the commissioner.

LEE COWART &
B. F. BERRY,
Att'ys for Defendants.

Filed Oct. 10th, 1898.

N. W. TRIMBLE, *Clerk.*

13 In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

UNITED STATES
vs.
WALTER W. MOTES ET ALS.

To the Hon. John Bruce, judge:

The petition of Walter W. Motes, Columbus W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship respectfully shows unto the court that they and each of them were convicted at the present term of this court upon an indictment charging them with conspiracy and murder, and that they have numerous exceptions reserved to the ruling of the court upon the trial of said case and upon motion in arrest of judgment. Wherefore the above-named defendants pray that a writ of error be allowed them, transferring their case to the Supreme Court of the United States, that the said Supreme Court may revise the action of this court in the premises, and petitioners assign as errors the following, viz:

1st. The ruling of the court in the matter of the drawing and organization of the jury.

2d. The ruling of the court in allowing the Government five peremptory challenges.

3d. The ruling of the court in refusing to allow the defendants eleven peremptory challenges each.

4th. The ruling of the court in allowing the testimony of various witnesses for the Government to go before the jury showing the defendants were guilty of illicit distilling and retailing liquor in violation of law.

5th. The ruling of the court in allowing the Government to
14 offer in evidence the still and distilling apparatus said to have been operated by some of these defendants.

6th. The ruling of the court in allowing, against defendants' objection, the testimony of James H. Lane to the effect that defendant Littlejohn had stated to witness that he, Littlejohn, and defendant Blankenship had been running a still together.

7th. The ruling of the court in allowing the jury to examine through the microscope particles of blood and brains said to have been removed from shoes found at the residence of the defendant Columbus W. Motes.

8th. The ruling of the court in allowing the testimony to be read to the jury of the accomplice Taylor taken in preliminary trial of The United States *vs.* Columbus W. Motes, William Robert Taylor, John Littlejohn, and Dodge Blankenship.

9th. The ruling of the court in allowing the testimony of the accomplice Taylor to go before the jury as against Walter W. Motes and Jasper Robinson, the two defendants who waived preliminary examination and were not on trial at the time the testimony of Taylor was taken.

10th. The ruling of the court in refusing the written charges asked by the defendant-.

11th. The ruling of the court in overruling the defendants' motion in arrest of judgment.

12th. The ruling of the court in requiring the defendants, each against his objection, to say whether he had or not been engaged in illicit distilling in violation of law.

WALTER W. MOTES,
COLUMBUS W. MOTES,
JASPER ROBINSON,
MARK GRANT BLANKENSHIP,
JOHN LITTLEJOHN,
By COWART AND BERRY,
Their Att'ys.

Allowed.
JOHN BRUCE, *Judge.*

Filed Oct. 10, 1898.
N. W. TRIMBLE, *Clerk.*

15 In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

UNITED STATES
vs.
WALTER W. MOTES ET ALS.

Now come the defendants in the above-entitled cause and moves the court to set aside the verdict of the jury and grant a new trial to the defendants upon the following grounds, to wit:

1st.

Because the evidence did not warrant a conviction.

2d.

Because the verdict of the jury was contrary to the evidence.

3d.

Because the verdict of the jury was contrary to the weight of the evidence.

4th.

Because said verdict was rendered by the jury on the evidence of an accomplice, and there was no evidence given in said trial as against defendants John Littlejohn, Mark Grant Blankenship, Walter W. Motes, and Jasper Robinson to corroborate the evidence of said accomplice.

5th.

Because the defendants have discovered new evidence since the trial of said case.

6th.

Because the court erred in allowing the testimony of the absent witness Taylor to go before the jury.

7th.

Because the court erred in allowing the testimony of the absent witness Taylor to go before the jury as against Walter W. Motes and Jasper Robinson, the two defendants who were not on trial at the time the testimony of said Taylor was taken before the commissioner.

LEE COWART &
B. F. BERRY,
Att'ys for Defendants.

Filed Oct. 15th, 1898.

N. W. TRIMBLE, *Clerk.*

16 In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, September Term, 1898.

THE UNITED STATES
vs.
WALTER W. MOTES ET ALS.

Be it remembered that the case of The United States *vs.* Walter W. Motes *et als.* coming on to be heard in the circuit court of the United States for the southern division of the northern district of Alabama—Hon. John Bruce, district judge, present and presiding—the following proceedings, among other things not otherwise appearing of record, were had, to wit:

After the defendants had been arraigned and pleaded not guilty it was, on the 14 day of September, 1898, ordered by the court, on motion of the U. S. attorney, that a special venire of thirty-five jurors be summoned, from which, together with the regular venire, a jury should be drawn to try the case, which was accordingly done, and the court ordered a list of the jurors comprising the regular and special venire, with residences of witnesses and jurors, to be served on each defendant at least two days before the day of trial.

The case was set for trial for September 20th, 1898. On that day the court ordered all of the names of all the jurors composing the special venire and also the regular venire placed in a box by the clerk and then and there to be drawn out by the marshal, one name at a time, and the court required the Government to pass on each juror as his name was drawn from the box, and if the juror was challenged by the Government he was excused, and if satisfactory to the Government the defendants were required to pass on
17 each juror as his name was drawn from the box, and if challenged by the defendants he was rejected.

To this manner of drawing and organizing the jury the defendants then and there duly objected on the ground that it was illegal. The court overruled the objection, and the defendants then and there duly excepted to such ruling and action of the court, and now assigns the same as error.

The court held that the Government was entitled to five peremp-

tory challenges, and the defendants twenty peremptory challenges; to which ruling of the court the defendants then and there duly excepted to such ruling of the court and now assigns the same as error.

The defendants, before challenging any juror, by motion to the court, demanded eleven peremptory challenges each; which motion was overruled by the court, and to which ruling of the court the defendants then and there duly excepted and now assigns the same as error. The drawing of the jury was then proceeded with, and the Government challenged peremptorily five jurors and the defendants challenged peremptorily seventeen persons.

After the organization of the jury in the manner above indicated the defendants objected to proceedings with the trial on that day, to wit, September 20, 1898, being the same day the jury was drawn from the special venire and regular venire aforesaid. The court overruled the objection, and the defendants duly then and there excepted to such ruling of the court, and now assigns the same as error.

18 The proof showed that the body of W. A. Thompson was found on the 16th day of March, 1898, on a trail between where the deceased resided and the town of Sylacauga, Ala., about three miles east of where the defendants Walter W. Motes, Columbus W. Motes, William Robert Taylor, and Jasper Robinson resided, and about three miles north of where the defendants John Littlejohn resided, and about eight miles north of where the defendant Blankenship resided; that he had been dead about 48 hours when his body was found, and that three shots had been fired, taking effect, one in his forehead, one in his neck, and one in his stomach, and that through the wound in his forehead part of his brains had exuded.

The proof showed and it was admitted that on the 2d day of October, 1897, W. A. Thompson had reported and informed R. A. Moseley, Jr., a commissioner of the circuit court of the United States for the northern district of Alabama, that Chess and Walter Motes, Ben Morris, Bob Taylor, and Jasper Robinson had in the fall of 1895 violated the internal-revenue laws of the United States; that on the preliminary trial of said defendants before said commissioner, in October, 1897, said W. A. Thompson was a witness for the Government; that all of said defendants were held for trial by said commissioner, and afterwards, at the adjourned September term of the U. S. courts for the southern division of the northern district of Alabama, in November, 1897, the grand jury of said court presented indictments against said defendants; that said Thompson was a witness against all of them before said grand jury; that the cases against the above-named defendants had been continued at the March term, 1898, of the U. S. courts for this division and district, on, to wit, the 12th day of March, 1898; that W. A. Thompson was a witness for the Government, and attended as such at said

19 March term, 1898, and was discharged as such witness for said term on the 12th day of March, 1898.

The proof further showed, and it was admitted, that in February

or March, 1898, said W. A. Thompson had informed one W. C. Hanlin, a deputy collector of internal revenue for the district of Alabama, that the defendant Blankenship was violating the internal-revenue laws of the United States, and that said Hanlin, in company with Deputy Marshal Mitchell and one Phillips, made a raid near said Blankenship's residence and destroyed an illicit distillery, and arrested said Blankenship on a charge of violating the internal-revenue laws of the United States on the 7th day of March, 1898, and that said Thompson was not used as a witness for the Government against said Blankenship.

The defendants then and there objected to the introduction of the proof of the destruction of said illicit still near the house of the defendant Blankenship, and also moved to exclude it from the jury on the grounds, first, that it was irrelevant; second, that it was immaterial; and, third, that it was illegal. The court overruled the objections, and the defendants then and there duly excepted thereto, and now assigns the same as error.

The proof further showed that Blankenship, when he was arrested and afterwards, said that he believed W. A. Thompson reported him for stilling, and that if he did he would kill him if it cost him his life.

The U. S. attorney offered to prove by Mrs. W. A. THOMPSON that in the fall of 1895, in Talladega county, Alabama, she saw the defendants Walter W. Motes, Columbus W. Motes, William Robert Taylor, and Jasper Robinson operating an illicit distillery. To the introduction of this testimony the defendants then and the- duly objected upon the grounds, first, that it was irrele-
20 vant; second, that it was incompetent and tended to prejudice the mind of the jury. The court overruled the objections, and the defendants then and there duly excepted — the ruling of the court, and now assigns the same as error.

The U. S. attorney also showed said witness a still and distilling apparatus set up in the presence of the court and jury, which she identified as the still she saw said defendants operating during the fall of 1895, and after having the same identified by witness the said still and distilling apparatus, including the cap and worm, was offered in evidence by the U. S. attorney. The defendants then and there objected to the introduction of this testimony on the grounds, first, that it was irrelevant; second, that it was incompetent and misleading. The court overruled the objections, and the defendants then and there duly excepted to such ruling of the court, and now assign such as error.

The court allowed the U. S. attorney to set up said still, cap, and worm in the presence of the jury; to which the defendants objected. The objection being overruled by the court, the defendants then and there duly excepted. The court allowed said still and distilling apparatus to remain in the presence of the jury throughout the trial of the case against the objection of the defendants, and the defendants now assign said ruling and action of the court as error.

The United States attorney, by witness B. W. BELL, offered to prove that the still and distilling apparatus offered in evidence was found by him near the dwelling-house of Walter W. Motes, one of the defendants; that said still was not set up and in a condition to be operated, but had been buried in the ground and covered up with boards and dirt. The defendants objected to the introduction
21 of this testimony on the grounds, first, that it was illegal; second, that it was irrelevant; third, that it was immaterial and misleading. The court overruled the objection, and the defendants then and there duly excepted, and now assign the same as error.

The U. S. attorney offered to read to the jury the evidence of William Robert Taylor taken in the preliminary trial before U. S. Commissioner Wilson of the case of The United States *vs.* Columbus W. Motes, William Robert Taylor, John Littlejohn, and Dodge Blankenship, and for the purpose of laying a predicate for offering said testimony he examined Capt. B. W. Bell, who testified that he was a special officer of the department of justice; that he had been engaged in working up the cases against these defendants and preparing them for trial; that in August, 1898, he caused the arrest of said William Robert Taylor and also Columbus W. Motes, John Littlejohn, and Dodge Blankenship on a charge of conspiracy and murder of W. A. Thompson, and that on the 19th day of August, 1898, during and on the second day of their preliminary trial, one of the defendants, William Robert Taylor, voluntarily became a witness for the prosecution, and made a statement implicating in said murder Columbus W. Motes, John Littlejohn, and Dodge Blankenship, who were at that time having their preliminary hearing before said commissioner, and also implicating in said murder Walter W. Motes and Jasper Robinson, who had been brought to said preliminary trial as witnesses for the Government, and that on the second day of said preliminary trial he (Bell) caused the arrest of the said Walter W. Motes and Jasper Robinson; that Taylor and the other three defendants on trial with him were held for trial by the commissioner and committed to jail without bail to await trial, and that since that time the said Taylor has been confined in the Jefferson county, Alabama, jail under commitment issued by said commissioner; that after the beginning of the present trial on the 20th of September, 1898, he went to the jail, took said Taylor into his custody
22 more than two days before said Taylor escaped, and that said Taylor had not been in jail since, but that he had placed him in charge of one Ed. May, a witness for the Government in this case, and instructed May to let Taylor stay at the hotel at night with his family, and that in pursuance of said instruction Taylor remained at the hotel Tuesday night and Wednesday night before he absconded on Thursday; that he saw Taylor in the corridors of the court-room about 10 o'clock a. m. Thursday, before he was called as a witness, about eleven o'clock the same day, and that when Taylor failed to respond he made a search for him in the city of Birming-

ham, and telegraphed to several places, and could not find him or learn anything at all as to his whereabouts.

Said witness, B. W. Bell, further testified that on the preliminary trial, before H. A. Wilson, United States commissioner, that Walter W. Motes and Jasper Robinson were arrested during the trial of the other defendants, Columbus W. Motes, John Littlejohn, and Dodge Blankenship, said Taylor having implicated them in his testimony upon said trial. The defendants were all represented upon said preliminary trial by Mr. Lee Cowart. Mr. Cowart cross-examined the witness, as shown in the testimony; that all of the defendants, including the said Walter W. Motes and Jasper Robinson, had an opportunity to cross-examine the said witness, Taylor, and he in fact was cross-examined by Mr. Cowart, acting either as attorney for Columbus W. Motes, John Littlejohn, and Dodge Blankenship or for all defendants; that said cross-examination was reduced to writing; *the* he (said Bell) had never made or offered the said Taylor any inducements, promises, reward, or hope to induce him to make said statement; that before said Taylor was examined as a witness on the said preliminary trial he was taken to the
23 office of the United States attorney, who cautioned him to make no statement unless it was purely voluntary, and told him emphatically that he could make no promise and offer him no hope whatever, and that said Taylor stated that he made the statement voluntarily and to relieve his own mind.

The U. S. attorney also offered the U. S. marshal as a witness, who testified that he had instructed his deputies that Taylor had escaped; that he had offered a reward of two hundred dollars for his ar-est; that he had made diligent search in the city of Birmingham for Taylor and could not learn anything as to his whereabouts.

The U. S. attorney also offered the chief of police of the city of Birmingham as a witness, who testified that he had not been officially notified that Taylor had escaped, but that he had seen something concerning it in the newspapers, and that he had made no special effort to arrest him and had no information as to his whereabouts.

The U. S. attorney then offered as a witness a deputy sheriff, who testified that the sheriff of Jefferson county and his deputies had been on the lookout for Taylor ever since his absence was known; that they had had photographs taken of him and sent them to various places, and that the deputies had been on the lookout for him all over Birmingham and other parts of Jefferson county, and that they had been unable to find him anywhere.

The Government then introduced as a witness H. A. Wilson, who testified as follows: I am a United States commissioner and held the preliminary trial in the case against these defendants on the 18th and 19th day- of August, 1898. The defendants Columbus W. Motes, William Robert Taylor, John Littlejohn, and Dodge Blankenship were brought before me upon a warrant issued on affi-
24 davit before U. S. Commissioner R. A. Moseley, Jr., by Special Officer Bell. Jasper Robinson and Walter W. Motes were

present in court while the case was being heard. William Robert Taylor, one of the defendants, during the trial proposed to make a statement in the nature of a confession. I cautioned him and told him that he could not be made to testify unless he choose to *to* do so, and asked him if any inducement or promise had been made or offered to him. He said there had not; that the statement was voluntary, and he made it to relieve his mind. Walter W. Motes and Jasper Robinson were present in court as defendants at the time, as well as the other defendants who were on trial. I swore William Robert Taylor as a witness, administering to him the usual oath. He was then examined and his testimony was committed to writing. I identify this statement (referring to the evidence of Taylor here handed to the witness) as the evidence taken before me. In his testimony, as is shown and as was the fact, he implicated the defendants Jasper Robinson and Walter W. Motes, who were arrested then and there. The defendants Columbus W. Motes, Blankenship, and Littlejohn were represented by Mr. Cowart, and so were the defendants Walter W. Motes and Jasper Robinson as soon as they were arrested, and the trial of the four defendants then on trial, to wit, Columbus W. Motes, William Robert Taylor, John Littlejohn, and Dodge Blankenship, was proceeded with and concluded in the presence of the defendants Jasper Robinson and Walter W. Motes.

Mr. Cowart, as a matter of fact, did cross-examine the witnesses, as is shown by this testimony and as I recollect it, and all of the defendants, including Walter W. Motes and Jasper Robinson, were allowed by me an opportunity to cross-examine, although no separate trial was had and all of these were examined without bail.

The Government then offered in evidence the testimony of WILLIAM ROBERT TAYLOR, which was in words and figures as follows:

25 WM. R. TAYLOR, being sworn, voluntarily makes the following statement as a witness in behalf of the United States in the cause now pending against John Littlejohn, Dodge Blankenship, Chess Motes, and Bob Taylor:

Q. Are you one of the defendants?
A. I am.
Q. Where do you live?
A. I live in Talladega county, near the line of Coosa, about 10 miles from Sylacauga.
Q. How old are you?
A. About thirty-three, I think.
Q. How long have you known Chess Motes?
A. I have known him nearly all his life.
Q. How long have you known Littlejohn and Blankenship?
A. I have known them nearly all my life.
Q. How long have you known Doc. Thompson before he was killed on March 14th, 1898?
A. I had known him for about 8 or 10 years before his death.

Q. Do you know where Doc. Thompson had been on the morning of the day he was killed?
A. He had been to Sylacauga.
Q. In what direction was he going the ev-ning he was killed?
A. Towards his home.
Q. About how far was he from his home when he was killed?
A. About a mile and three-quarters.
Q. Did you see him killed?
A. Yes, sir.
Q. Who killed him?
A. Chess Motes and Walter Motes.
Q. How many shots were fired?
A. Three.

26 Chess Motes fired the first shot out of a rifle, a squirrel rifle, and was a muzzle-loading rifle. Walter Motes fired the second and third shots with a pistol. The witness here is shown a rifle, which is offered in evidence, and, after examining it, identifies it as the gun used by Chess Motes in shooting W. A. Thompson, better known as Doc. Thompson. The gun belongs to Chess Motes. Chess Motes shot Doc. Thompson with this gun at the time he was killed, the ball striking him in the stomach. When the ball struck Thompson he walked a few steps and fell. After he fell Walter Motes shot him in the neck. Thompson got up after he fell. Walter Motes fired the shot that struck him in the neck after he got up. While Thompson was getting up he got some rocks, which he threw, hitting the defendant Blankenship, hitting him in the back.

After Thompson threw the rock he fell over the second time. Walter Motes then shot him in the head with a pistol, the ball striking him over one of his eyes. Thompson was lying on his back when Walter Motes fired the shot that hit him in the head. Walter was about a foot from him—that is, the pistol was about within a foot of his head. He was standing a little to the left and a little to the rear of him and placed the pistol within about a foot of his head and fired, the ball striking him in the forehead. Thompson never moved or said anything after he got this last shot. He was in the path when the first shot was fired by Chess Motes. When Walter Motes fired his first shot Thompson was four or five steps from the path. When Walter fired the last shot he was just a few steps from the path. At the time of the killing there were present myself, Chess Motes, Walter Motes, Dodger Blankenship, John Littlejohn, and Jasper Robinson. We were standing only a

27 few steps from the path when Chess Motes fired the first shot at Thompson; we were behind the trees. We were behind the trees waiting for Thompson to shoot him. We were behind the trees for about an hour before Thompson came up the path. We knew that he had gone to Sylacauga; Chess Motes said he had gone to Sylacauga, and we knew the path he would take in going back home. Chess Motes was standing behind a tree by the side of the path when he fired the shot that hit Thompson in the stomach. When the ball hit Thompson he walked on about four steps before

he fell. He left the path after he was hit. He did not make any remark after he was hit, that I know of. After he was first hit we all went towards him, Walter Motes getting to him first. The pistol Walter used in firing at Thompson was his own, I think. I had seen Walter with the pistol. When the ball hit Thompson in the head some blood or brains came out, the ball making a common-size hole. His face was powder-burnt from the pistol around the hole in his head. After he was killed his body was moved about 10 or 15 feet and put in the trail, I think, straight up and down. He was lying out straight in the trail. his hands being placed across his breast, his feet being straight out. He was lying on his back. Chess Motes crossed his hands over his breast. I do not remember who straightened out his feet. I don't think we all helped to move his body. I think myself, Chess Motes, and Walter Motes moved the body. When Thompson received the first shot his hat, bundles, etc., fell. I do not think he had on his coat, but had it on his arm. When the last shot was fired he did not have his hat or coat on. Blankenship and Littlejohn rode to the place where the killing occurred; one was on a horse and the other on a mule. Blankenship owned the mule. The mule and horse were hitched about fifty
28 or a hundred yards from the place where the killing occurred. I am tolerable good judge of distances. I saw the animals hitched there. I went to the place with Jasper Robinson—to the place of the killing—from my home. Chess Motes had told me that day that Thompson was going to pass that way. Chess and myself had talked about this matter before. Jasper Robinson and myself knew what we were going there for. Chess Motes said that he had notified the other parties. I went to Blankenship's house that day, having been sent there by Chess Motes, to tell Blankenship to go up there to the place where Thompson was afterwards killed. I did not find Blankenship at home. After the killing that night, I and Walter Motes went back to Blankenship's house. We killed Thompson because he had reported illicit distilleries in that neighborhood. We went to that place to kill him for that, and nothing else. The men he had reported was myself, Chess Motes, Walter Motes, Jasper Robinson, Ben Morris, and Dodger Blankenship. We all knew that he had reported us, or that he swore against us, and for this reason we went there to kill him, and he was killed. All these stills were said to be in that neighborhood.

Cross-examined by COUNSEL FOR DEFENDANTS:

I am one of the defendants arrested in this case, and have been in jail about 14 days, I think. I have not had any conversation with the Government officers about what I would testify in this case since I have been in jail. I did not tell them what I would testify while I was in jail. I have not at any time told any of the Government officers what I would swear to. I took it upon myself to testify, and I did not know that I was going to do it until I came in the court-house this morning. I had not been

asked by anybody to testify, and had not told any per-
29 son who killed Thompson except Mr. Bell. I told Mr. Bell how I killed Thompson this morning since breakfast. I did not see Mr. Bell until I was brought out of jail. I saw Mr. Bell in the jail office. When I told him that I saw Thompson killed I was here in the court-house and told him all that I knew about it. I knew Mr. Bell was a Government officer. He did not ask me to tell. I sent for Mr. Bell last night to come to the jail. The killing occurred, as well as I can recollect, between 4 and 5 o'clock the 14th day of March, 1898, on Monday. I first saw Chess Motes on the morning of the 14th of March. He came by my house. I did not work at a blacksmith's shop that day. I never worked in any blacksmith's shop on that day. It was early in the morning when Motes came by my house, which is about five miles from where Thompson was killed. Chess Motes was walking. I next saw Chess Motes at the path where Mr. Thompson was killed. That night, after the killing, I went to Blankenship's house. Walter Motes went with me. We found Mr. and Mrs. Blankenship at their house. There was no one else there. We stayed there till 8 o'clock that night. I saw John Littlejohn that evening at the place of the killing; had not seen him before that day and had not talked with him about the killing. John Littlejohn was there at the killing, but did not shoot any. We all went there to kill Thompson. John Littlejohn went there for that purpose also, but had nothing to do with it except stand there and see it done. John did not have any gun that I saw. He did not say anything to me about killing and had nothing to do with it. He came with Blankenship. Blankenship got hit, but did not hit anybody. I never told Blankenship and John Littlejohn what we were there for. I do not know whether Chess Motes went by for them or not. I do not know whether anybody told them to come there or not. I only know that Chess told me that he had told them. I never heard them say anything about killing Thompson. *I never heard them say anything about*
30 *killing Thompson.* I never heard Chess say anything about the killing in the presence of either of them. I never heard Blanken- or Littlejohn make any threats. I did not have any understanding with Littlejohn and Blankenship to meet me there that morning. It had been probably a week since I had seen them. Thompson had not been a witness against Littlejohn that I know of. I was not there when Blankenship was tried. Littlejohn and Blankenship had been there with us about an hour before Thompson was killed. So far as I know, they did not know that we were there, for Motes told me that he was going to Littlejohn's when he passed my house, which is about three and a half miles from my house. There was no one present when he passed my house, except my wife.

By the COURT:

Thompson did not say anything after he was first shot; he only threw the rock; all walked to the place except Blankenship and Littlejohn. We had been there for about an hour before Doc.

Thompson came along, scattered along the trail on each side behind trees. There was not a word said to Thompson before he was shot. After the last shot was fired we did not remain there more than five minutes. While we were moving the body the rest of them came along and stood by us. Chess Motes examined his (Thompson's) clothing after he was killed and found some money. Since Chess had been threatening to kill Thompson, we had an agreement that he was to be killed. Blankenship and Littlejohn were behind trees also.

31 Redirect:

It was probably nine o'clock when I made my statement to Capt. Bell. I told Capt. Bell that I wanted to talk with the district attorney. I had talked with Capt. Bell before I talked with the district attorney. I talked with the district attorney after I came into the court-house. This talk with Capt. Bell was in the court-house after I had been brought up for trial. I was in the office of the district attorney's office when I talked with *with* the district attorney, Capt. Bell, and Mr. Davidson, the assistant district attorney.

The district attorney notified me that he would make no promises as to what he would do, either directly or indirectly, and that I need not testify unless I wished to. I told the district attorney that I wanted to testify to relieve my mind of the trouble, and to give all the facts in connection with this case. He also told me that if I made a statement he wanted me to tell the truth, the whole truth, and nothing but the truth about any one.

From the ball of the foot down to the end of his toes the sole of his shoe was worn off exposing that portion of his foot or toes. I don't think Chess Motes had any other shoes at that time. The sole of the shoe was wore so that the upper part of the shoe made an impression as it dropped down—that is, the sides.

Cross-examination by COUNSEL FOR DEFENDANTS:

I stated this morning that I did not have any conversation with any Government officer while I was in jail. I saw Ben Morris on the day of the 14th, the day that Doc. Thompson was killed. He passed my house. I did not work for Ben Morris that day. I went to Mr. Blankenship's. Mr. Chess Motes stayed the night after the killing at my house. He was there when I came from Blankenship's.

his
W. R. x TAYLOR.
mark.

Witness:
C. F. MANLY.

32 The defendants then and there objected to the introduction of this testimony on the grounds that a sufficient predicate had not been made for its introduction. The court overruled the objection, and the defendants then and there duly objected and now

assigns the same as error. The defendants then and there objected to the reading of this testimony to the jury on the same grounds as above stated. The court overruled the objections, and the defendants then and there duly excepted.

The defendants Walter W. Motes and Jasper Robinson separately and severally then and there objected to the reading of said testimony to the jury on this trial as against them on the ground that they were not on preliminary trial at the time said testimony was taken, were not parties to the case then being tried, and had not been legally called upon to cross-examine said witness. The court overruled the objection, and the defendants Walter W. Motes and Jasper Robinson then and there duly excepted, and now assigns the same as error.

As corroborative of the testimony of said accomplice Taylor, the U. S. attorney offered one BEN MORRIS as a witness, who testified that about February or early in March he had a conversation with one of the defendants, Columbus W. Motes, in which said Motes told witness that he, Motes, had previously gone to the house of W. A. Thompson to kill him, but did not get to do it, and also said he was going to kill Thompson.

The U. S. attorney also offered as a witness Mrs. MARY TAYLOR, wife of the accomplice William Robert Taylor, who was then awaiting sentence under a plea of guilty to the indictment on which the defendants were then being tried. The defendants then and there duly objected to the evidence of this witness on the ground that she was the wife of one of the defendants mentioned in the indictment. The court overruled this objection, and the defendants then and there duly excepted, and now assign the same as error.

33 The said witness testified that she was the wife of the said William Robert Taylor; that on March 13th, 1898, one of the defendants, Columbus W. Motes, came to the house of witness and had a conversation in her presence with her husband, in which conversation she heard them agree that they would kill Thompson the next day as he came from Sylacauga; that in said conversation she heard them agree that they had got their cases continued, and that they would have to get rid of Thompson before next court to keep him from appearing as a witness against them in the U. S. court at Birmingham.

The U. S. attorney also offered as a witness Dr. J. E. PEARSON, who testified that he was a practicing physician and surgeon, a graduate of medicine and surgery, and had experience in examining blood of animals and human beings; that he had made a careful examination of the shoe shown him, which was shown to have been worn by one of the defendants, Columbus W. Motes, about the time Thompson was killed and previous thereto and afterwards found near said defendant's house, and that he had found on it particles of human blood and brains. The district attorney then asked the court to allow the jury to look through the microscope and

see for themselves the particles of blood and brains described by the witness, Dr. Pearson, and the defendants then and there objected allowing the jury to look through the microscope and examine said alleged blood and brains on the ground that it allowed the jury themselves to become experts. The court overruled the objection, and the defendants then and there duly excepted and now assigns the same as error.

The jury were then allowed one at a time to examine the alleged blood and brains through the microscope, and all of the jurors except two or three availed themselves of the privilege and did look through the microscope at the substance Dr. Pearson testified
34 had been taken from the show in question and was, in his opinion, human blood and brains. The defendants excepted to the action of the court in allowing the jury to look through the microscope, as above stated, and now assign such ruling of the court as error.

When the defendants respectively took the stand to testify in their own behalf and each in his own behalf, he was required by the ruling of the court to answer questions propounded by the U. S. attorney, and say whether or not he had been guilty of illicit distilling previous to the time said Thompson was killed. Before the defendants respectively answered these questions in behalf of each defendant who took the stand, counsel for the defendants objected to such questions on the ground that the answer was not relevant to the issue on trial; and, second, that it would tend to incriminate the defendant for an offense for which he was not now being tried. The court overruled the objection, and the defendants then and there separately and severally excepted to the ruling of the court and now assign the same as error.

The proof also showed that W. A. Thompson was, at the March term, 1893, of the district court of the United States for the southern division of the northern district of Alabama, convicted on an indictment charging him with the offense of illicit distilling and sentenced to serve a term of eighteen month- in the Iowa penitentiary, at Anamosa, Iowa.

The U. S. attorney also offered several other witnesses on behalf of the Government, but the tendency of their testimony is not stated in this bill of exceptions for the reason that no objection was made and no exception reserved to the testimony of said witnesses.

The defendants examined as a witness COLUMBUS W. MOTES, one of the defendants, who testified as follows: My name is Columbus W. Motes; I am about thirty years old. I know the defendants who are on trial for the murder of W. A. Thompson; I
35 knew Thompson, and know when and where he was killed; I also know who killed him.

He was killed on March 14th last, near his home, by myself and William Robert Taylor. No other person had anything whatever to do with it. I went to Taylor's house on March 13th, 1898, just after he had returned from Birmingham, where he had been attending the United States court as defendant. We were both under

indictment in the United States court at Birmingham for illicit distilling. Taylor attended court and I did not. W. A. Thompson was a witness against both of us, but I did not know who reported us. Taylor told me on the 13th of March, the day he got home from the United States court at Birmingham, that he got our cases continued on March 12th, 1898, until the next term of the court. We then and there agreed to kill Thompson to keep him from appearing as a witness against us at the next term of the court. We agreed to kill him on the next day as he came from Sylacauga, so the neighbors would think he was killed by Dodge Blankenship and Ad Smith, who only a few days before that time had been arrested and bound over for illicit distilling.

We took my gun, a rifle, and went to the place where we knew Thompson would pass and waited until he came along. Taylor shot him three times with the rifle. I was watching, according to the agreement between us, to see if any person saw us. The third shot is the one that killed him. The bullet entered his forehead. After we killed him, which was about the middle of the evening, we got his money out of his pockets, eighteen dollars, all in two-dollar bills, and the next morning we hid it in a tree near Taylor's house.

36 Neither John Littlejohn, Dodge Blankenship, Walter Motes, or Jasper knew anything about our plans to kill Thompson, were not present when he was killed, and had nothing whatever to do with the murder.

37 After the testimony was closed and before the jury retired to deliberate upon their verdict, the defendants asked the court to give to the jury the following charges in writing, numbered for the purpose of this bill of exceptions consecutively from 1 to 14:

1.

If the jury believe the evidence, they will find the defendants not guilty.

2.

If the jury believe the evidence, they will find the defendant Walter Motes not guilty.

3.

If the jury believe the evidence, they will find the defendant Jasper Robinson not guilty.

4.

A probability of the innocence of the defendants Dodge Blankenship, John Littlejohn, Walter Motes, and Jasper Robinson is a just foundation for a reasonable doubt of their guilt, and is therefore sufficient to entitle them to a verdict of not guilty.

5.

The court charges the jury that before a conspiracy can be established and made out they must be satisfied beyond a reasonable

doubt that there was an agreement by and between them to commit the offense charged in the indictment, and that though they may find that this agreement was made by some of the defendants, and yet if they were not present and either aided or abetted in the consummation of the offense, they must find the defendants not guilty.

38 6.

To be a citizen of the United States means that a person has been born or naturalized in the United States. Mere proof of the fact that a person has had his residence in the United States is not sufficient to make him a citizen of the United States within the meaning of the law.

7.

A person may reside in Talladega county, Alabama, or in any other place in the United States, and not be a citizen of the United States within the meaning of the law, and before the jury can convict the defendants in this case they must believe from the evidence in the case beyond a reasonable doubt and to a moral certainty that W. A. Thompson was not only a resident of Talladega county, Alabama, but that he was also a citizen of the United States, entitled to all of the civil and political rights to which a citizen may be entitled under the Constitution and laws of the United States.

8.

The court charges the jury that if the weaker and less satisfactory evidence is given and relied on in support of a fact, when it is apparent to the court and jury that proof of a more direct and explicit character was within the power of the Government, the same caution which rejects the secondary evidence will awaken distrust and suspicion of the weaker and less satisfactory, and it may well be presumed that if the more perfect exposition had been given, it would have laid open the deficiencies and objections which the more obscure and uncertain testimony was intended to conceal.

9.

That if the jury believe from the evidence that Robert Taylor and Columbus Motes were the only defendants that did conspire to kill Thompson in the account of exercising the right of a
39 citizen of the United States in becoming a witness in the court of the United States, then they will find Walter Motes, Jasper Robinson, John Littlejohn, and Mark Blankenship not guilty.

10.

That although the jury may believe from the evidence that W. A. Thompson came to his death at the hands of the defendants, this is not sufficient to convict the defendants as charged; that they must further find from the evidence that the defendants, each of them, did conspire in manner and form as charged in the indictment, and

if they fail to find that there was a conspiracy between the defendants as charged in the indictment, then they must find the defendants not guilty.

11.

The court charges the jury that the testimony of Robert Taylor, taken before the commissioner in the preliminary trial, cannot be considered by them as evidence against the defendants not on trial at the time at which the testimony was taken.

12.

If the jury finds from the evidence that W. A. Thompson had been convicted of an offense punishable by imprisonment in the penitentiary and sentenced to serve a term of eighteen month- in the penitentiary, they will find all of the defendants not guilty.

13.

If the jury find from the evidence that W. A. Thompson has been convicted of an offense punishable by imprisonment in the penitentiary, they will find all of the defendants not guilty.

14.

If the jury believe from the evidence that W. A. Thompson was killed because he was a witness in the district court of the United States, and they should find further that these defendants or either of them are guilty of the murder of Thompson, it is then the duty of the jury to find such defendant or defendants guilty as charged in the seventh or last count in the indictment.

Each and every one of the foregoing charges, from No. 1 to No. 14, inclusive, was separately refused by the court. The defendants then and there duly excepted separately to the ruling of the court in refusing each and every one of said above-numbered written charges, and now assigns such ruling of the court separately as to each of said charges as error.

The objections and exceptions as set forth in this bill of exceptions were made and reserved before the jury retired to deliberate upon their verdict. After the conviction of the defendants by the jury and before the sentence was pronounced by the court the defendants filed the following motion in arrest of judgement:

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

"THE UNITED STATES
vs.
WALTER W. MOTES ET ALS.

Now comes the defendants in above case, after the rendition of the verdict of the jury finding them guilty as charged in the indictment and before judgement and sentence, and moves the court

to arrest the judgement in this case upon the ground that said indictment charges the defendants in each count thereof with two separate and distinct offenses not of the same class.

2nd. That said indictment charges the defendants with two separate and distinct offenses, viz., said indictment charges the defendants with conspiracy, in violation of section 5508 of the Revised Statutes of the United States, which prescribes a punishment
41 of not more than ten years' imprisonment, and in the same count, in each and every count of said indictment, the defendants are charged with murder in the first degree, which offense is not of the same class as the other offense charged in the indictment.

LEE COWART,
Attorney for Defendants."

"Indorsed: 2348. The United States *vs.* Walter W. Motes *et als.* Motion in arrest of judgement. Filed October 4th, 1898. N. W. Trimble, clerk."

The court overruled said motion, and to said ruling of the court the defendants then and there duly excepted and now assign the same as error.

And in the several actions and rulings of the court hereinbefore set forth, to which objections were made and exceptions reserved, the defendants say there is manifest error and here and now tender this their bill of exceptions, which is duly signed, sealed, and had in term time this 6th day of December, 1898.

JOHN BRUCE, *Judge.*

Filed Decemb. 6th, 1898.
(S'g'd) N. W. TRIMBLE, *Clerk.*

42 Convening September Term of Court, March 5, 1898, September Term, 1898.

UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Pleas had at a regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-room, in the city of Birmingham, in said division of said district, the first Monday of September, it being the 5th day thereof, in the year of our Lord 1898, and of the Independence of America — 123 year.

Present: Hon. John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, sitting as circuit judge; Wm. Vaughan, Esq., U. S. attorney; J. W. Davidson, Esq., ass't U. S. attorney; D. N. Cooper, U. S. marshal, and N. W. Trimbel, clerk.

TUESDAY MORNING, *Sept.* 13*th*, 1898.

THE UNITED STATES
vs.
WALTER W. MOTES, COLUMBUS W. MOTES, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship.
} Indictment for Violation of Section 5508, R. S. U. S.

This day comes the United States, by its attorney, William Vaughan, Esq., and also come the defendants, Walter W. Motes, Columbus W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, in person, in open court, and by their counsel, Lee Cowart, Esq., and, being duly ar-
43 raigned and said indictment filed in said cause being read to them by the U. S. attorney, all and each of said defendants, except William Robert Taylor, plead not guilty, and to said indictment the said William Robert Taylor, one of the defendants, pleads guilty.

It is ordered that this cause be set down for trial on Tuesday, September 20th, A. D. 1898.

WEDNESDAY MORNING, *September* 14*th*, *A. D.* 1898.

THE UNITED STATES
vs.
COLUMBUS WINCHESTER MOTES ET ALS.
} Indictment for Violation of Section 5508, R. S. U. S.

On a former day of this term, the defendants, Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, having been duly arraigned in open court, each for himself, plead "not guilty," except William Robert Taylor, who pleaded "guilty." It is hereby ordered and adjudged that said cause be set down for trial on Tuesday next, September 20th, A. D. 1898, and it is further ordered that the clerk and marshal draw from the regular jury-box, in open court, the names of thirty-five persons to serve as jurors at this term of the court, and the clerk will issue a venire for such persons so drawn as jurors and place the same in the hands *hands* of the marshal, and the marshal shall execute the same by summoning said thirty-five persons to attend and serve as jurors. It is further ordered that the clerk shall make out certified copies of the indictment in this cause, together with correct lists of the names and residences of the thirty-five jurors this day drawn in open court, as aforesaid. If is further ordered that the marshal shall serve upon each of said defendants a copy of the indictment in said cause,
44 together with a copy of the lists, as aforesaid, of the said jurors, both these on the regular panel and these this day drawn in open court. It is further ordered that the clerk prepare a list of the Government witnesses in this cause and the marshal will serve each defendant with a copy of such list.

It is further ordered that the marshal shall serve copies of the

indictment, the list of jurors, and the list of said witnesses upon each of said defendants at least two entire days before the 20th day of September next, the day on which said cause is set down for trial.

The marshal and clerk, by order of court, bring into court the jury-box, and draw the names of the following persons as jurors :

R. C. Rector,	Vernon,	Lamar	county.
James C. Knight,	Hurley,	Cherokee	"
Mack Cummings,	Gadsden,	Etowah	"
J. F. McNeal,	Sloan,	Blount	"
Hope Hargrove,	Cottondale,	Tuscaloosa	"
Noah McGhee,	Centre,	Cherokee	"
Geo. P. Jones,	Aldrich,	Shelby	"
John Trimble,	Bodka P. O.,	Sumter	"
William Allen,	Woodstock,	Bibb	"
Charles A. Vildibill,	Avondale,	Jefferson	"
Thomas Y. Daniels,	Taff,	Cherokee	"
S. A. Ryland,	Adville,	Blount	"
W. H. McElrath,	Spring Garden,	Cherokee	"
Henry P. Stewart (c.),	Piedmont,	Calhoun	"
William Leonald (c.),	Pleasant Ridge,	Greene	"
J. E. James,	Jamesville,	Bibb	"
John Inge (c.),	Ramsey,	Sumter	"
Zack Story (c.)	Mantan,	Greene	"
Marcus T. Martin,	Anniston,	Calhoun	"
Nick Carnes,	Oneonta,	Blount	"
James E. Ruffin,	Helena,	Shelby	"

45

Owen Nealy (c.),	Ashville,	St. Clair.
James Donovan,	Birmingham,	Jefferson.
John M. Satterfield,	"	"
Sidney W. Lee,	"	"
Charles W. Frobus,	"	"
W. H. Shepherd,	Berry Station,	Fayette.
W. R. Hall (c.),	Horse Creek,	Walker.
George Washington (c.),	Birmingham,	Jefferson.
Joseph C. Lindsay (c.),	Anniston,	Calhoun.
R. H. Hudson,	Coalburg,	Jefferson.
C. W. Ewing,	Gadsden,	Etowah.
John McGhee (c.),	Bangor,	Blount.
C. J. Geary,	Eutaw,	Greene.
Rhodes H Alston (c.),	Calera,	Shelby.

FRIDAY MORNING, *September 16th, A. D.* 1898.

UNITED STATES
vs.
WALTER W. MOTES ET ALS. } Indictment Vio. Sec. 5508, R. S. U. S.

This cause coming on to be heard on motion of defendants' counsel for witnesses under sec. 878, R. S. U. S., and the same being

argued by counsel and duly considered by the court, it is ordered that the application prayed for be granted.

46 TUESDAY MORNING, *September 20th, A. D.* 1898.

UNITED STATES *vs.* WALTER W. MOTES, COLUMBUS W. MOTES, Wm. Robert Taylor, Jasper Robinson, John Littlejohn, Mark Grant Blankenship.	2348.	Sec. 5509, R. S.

This day comes the marshal of this district and returns that, in obedience to the special venire heretofore issued out of and under the seal of this court in this cause, and to him directed *returns*, he has summoned from the body of this district, according to law, as special petit jurors, the following-named persons, to wit:

R. C. Rector,	Vernon,	Lamar	Co., Ala.
Jas. C. Knight,	Hurley,	Cherokee	" "
Mack Cummings,	Gadsden,	Etowah	" "
J. F. McNeal,	Sloan,	Blount	" "
Hope Hargrove,	Cotton Dale,	Tuscaloosa	" "
Noah McGhee,	Centre,	Cherokee	Co., "
George P. Jones (c.),	Aldrich,	Shelby	" "
John Trimble,	Bodka P. O.,	Sumter	" "
William Allen,	Woodstock,	Bibb	" "
Chas. A. Vildibill,	Avondale,	Jefferson	" "
Thos. Y. Daniels,	Taff,	Cherokee	" "
S. A. Ryland,	Adville,	Blount	" "
W. H. McElrath,	Spring Garden,	Cherokee	" "
Henry P. Stewart (c.),	Piedmont,	Calhoun	" "
Wm. Leonard (c.),	Pleasant Ridge,	Greene	" "
J. E. James,	Jamesville,	Bibb	" "
John Inge (c.),	Ramsey,	Sumter	" "
47 Zack Storey (c.),	Mantau,	Greene	Co., "
Marcus T. Martin,	Anniston,	Calhoun	" "
Nick Carnes,	Oneonta,	Blount	" "
J. E. Ruffin,	Helena,	Shelby	Co., "
Owen Neely (c.),	Ashville,	St. Clair	Co., "
James Donovan,	Birmingham,	Jefferson	" "
Jno. M. Satterfield,	"	"	" "
Sidney W. Lee,	"	"	" "
Charles W. Frobus,	"	"	" "
W. H. Shepherd,	Berry Station,	Fayette	" "
W. R. Hall (c.),	Horse Creek,	Walker	" "
Geo. Washington (c.),	Birmingham,	Jefferson	" "
Joseph C. Lindsay (c.),	Anniston,	Calhoun	" "
R. H. Hudson,	Coalburg,	Jefferson	" "
E. W. Ewing,	Gadsden,	Etowah	" "
Jno. McGhee (c.),	Bangor,	Blount	" "
C. J. Geary,	Eutaw,	Greene	" "
Rhodes H. Alston,	Calera,	Shelby	" "

all of whom are now present except the following-named persons, to wit: Hope Hargrove, George P. Jones (c.), W. H. McElrath, and C. J. Geary.

For good and sufficient cause shown to the court, it is ordered that the following-named persons, summoned as petit jurors on the special venire, to wit, Jas. C Knight, J. T. McNeal, Chas. A. Vildibill, S. A. Ryland, J. E. Ruffin, Chas. W. Frobus, R. H. Hudson, and C. W. Ewing, are hereby excused.

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The manner of drawing and selecting the petit jury to try this cause having been drawn to the attention of the court, it is ordered by the court that the drawing and selection of said jury
48 shall be from those petit jurors now present belonging to and whose names are upon the list of regular jurors and also upon the list of special jurors now present in court, and the clerk is hereby directed to write upon slips of paper the names of the special jurors summoned for the trial of this cause as well as the names of the regular jurors now in attendance upon court, and fold or roll up and place said slips of paper containing such names as aforesaid and place the same in a box *as* some substitute therefor and have the same in court, and that the same be well shaken together, and it is further ordered that D. N. Cooper, Esq., U. S. marshal, be, and he is hereby, designated by the court to draw, in its presence, out such slips, one by one, until the jury is completed.

No. 2348. In obedience to the order of court of this date, the clerk did, in the manner as directed in said order, prepare the slips of the regular and special jurors present, fold up and place the same in a box, and shook same up in open court, the following being the names on the slips thus deposited in said box, to wit:

Benj. F. Wilson,	Round Mountain P. O.,	Cherokee	Co., Ala.
Dempsey Winn,	Livingston,	Sumter	" "
George Flemming,	Lawrence Sta.,	Cherokee	" "
Samuel Snoddy,	Jasper,	Walker	" "
William H. Bryan,	Birmingham,	Jefferson	" "
Marshal R. Murphy,	Oneonta,	Blount	" "
James Moore,	Tuscaloosa,	Tuscaloosa	" "
John McCoy,	Birmingham,	Jefferson	" "
R. C. Rector,	Vernon,	Lamar	" "
Mack Cumming (c.),	Gadsden,	Etowah	" "
Noah McGhee,	Centre,	Cherokee	" "
John Trimble,	Bodka P. O.,	Sumter	" "
Wm. Allen,	Woodstock,	Bibb	" "
Thomas Y. Daniels,	Taff,	Cherokee	" "
Henry P. Stewart (c.),	Piedmont,	Calhoun	" "
Elijah Smith,	Hamner,	Sumter	" "
James D. Hilton,	Carbon Hill,	Walker	Co., "

	Benj. F. Ginnings,	Rockrun,	Cherokee	"	"
49	T. B. Garren,	Tidmore,	Blount	Co.,	"
	Sam. Gilmore,	Columbiana,	Shelby	"	"
	Geo. W. Phillips,	Wynville,	Blount	"	"
	Frank M. Jeffries,	Fayette,	Fayette	"	"
	John P. Clements,	Northport,	Tuscaloosa	Co.,	"
	Monroe McAnally,	Blount Springs,	Blount	"	"
	Columbus C. Files,	Hugent,	Fayette	"	"
	Porter G. Pendergrass,	Fort Payne,	De Kalb	Co.,	"
	Richard Kemp,	Birmingham,	Jefferson	"	"
	Joe Lawrence,	Gadsden,	Etowah	"	"
	James H. Morrow,	Trussville,	Jefferson	"	"
	W. Spencer Jack,	Stewart's Sta.,	Hale	"	"
	W. R. Lollar, Sr.,	Oregonia,	Tuscaloosa	"	"
	George D. Fowler,	Liberty,	Blount	"	"
	Wm. H. Hunter,	Birmingham,	Jefferson	"	"
	Jackson A. Burgess,	Weavers,	Calhoun	Co.,	"
	Frank H. Hamilton,	Bham,	Jefferson	"	"
	Wm. Leonard (c.),	Pleasant Ridge,	Greene	"	"
	J. E. James,	Jamesville,	Bibb	"	"
	John Inge (c.),	Ramsey,	Sumter	"	"
	Zack Storey (c.),	Mantau,	Greene	"	"
	Marcus T. Martin,	Anniston,	Calhoun	"	"
	Owen Nealy (c.),	Ashville,	St. Clair	"	"
	Jas. Donovan,	Bham,	Jefferson	"	"
	John M. Satterfield,	"	"	"	"
	Sidney W. Lee,	"	"	"	"
	W. H. Shepperd,	Berry Sta.,			
	W. R. Hall (c.),	Horse Creek,	Walker	"	"
	Geo. Washington (c.),	Bham,	Jefferson	"	"
	Joseph C. Lindsay (c.),	Anniston,	Calhoun	"	"
	John McGee (c.),	Bangor,	Blount	"	"
	Nick Carnes,	Oneonta,	"	"	"

50 And, in further obedience to said order, the marshal did, in open court, draw out from the box containing the names hereinbefore stated, one by one, such slips until the jury to try this case was completed, the following being the names of the jury (as completed) to try said cause, to wit:

1. George Washington.
2. T. B. Garren.
3. Jno. M. Satterfield.
4. James Donovan.
5. Sam. Gilmore.
6. Porter G. Pendergrass.
7. Wm. Allen.
8. Mark Cumming.
9. Geo. D. Fowler.
10. Wm. H. Bryan.
11. Frank H. Hamilton.
12. Frank H. Jeffries.

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Ordered by the court that all other jurors whose names are in the special venire, excepting those who are on the panel selected to try this cause, are hereby excused for the term.

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Come the parties, by their attorneys, and also come the defendants in their own proper persons, who, being duly arraigned
51 upon the indictment filed herein against them and *who* after hearing said indictment read over to them, each for himself pleads not guilty.

Thereupon, to try the issues joined, come a jury of good and lawfule men, to wit, James Donivan and eleven others, who were duly elected, tried, and sworn, — the hearing of this cause is now commenced.

During the examination of witnesses, the usual hour of daily adjournment having arrived, the *forthe* trial of this cause is continued until tomorrow morning at 10 o'clock.

WEDNESDAY MORNING, *September* 21*st*, 1898.

THE UNITED STATES
vs.
WALTER W. MOTES ET AL. } 2348. Vio. Sec. 5508 & 5509, R. S.

Come again the parties, by their attorneys, and also come the defendants, Walter W. Motes, Columbus W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, in custody of the marshal, in their own proper persons, and also comes the same jury heretofore empanneled and sworn to try the issues joined herein, and the further trial of the cause is now *returned*, and during the examination of witnesses the hour having arrived for taking of the usual midday recess, and the trial of the cause not being concluded, it is ordered by the court that the jury trying said cause be placed in custody of a bailiff, and that they be kept together during said recess, and that they be again brought into court by said bailiff at 3 o'clock p. m., at which hour the further trial of this cause will be resumed.

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Ordered by the court that the marshal do furnish to the jury trying this cause, and also to the bailiff having charge of them,

their dinner, and that the expense therefor be borne by the
52 United States and paid for by said marshal out of any funds that may be now or that may hereafter come into his hands available for such purpose.

THURSDAY MORNING, *Sept. 29th*, 1898.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, presiding and sitting as circuit judge; Hon. William Vaughan, U. S. attorney; Messrs. Shelby S. Pleasants and J. W. Davidson, assistant U. S. attorneys; D. N. Cooper, Esq., U. S. marshal, and N. W. Trimble, clerk.

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Come again the parties, by their attorneys, and also come each and all of the above-named defendants, in their own proper persons, in custody of the marshal, and also come the same jury heretofore empanelled and sworn to try the issues joined herein, and the said jury, after having heard all the evidence addressed and after the conclusion of the arguments of counsel and after being charged by the court, retired to their room to deliberate upon the cause and consider of their verdict.

53 THURSDAY, *Sept. 29th*, 1898.

UNITED STATES *vs.* WALTER W. MOTES, COLUMBUS W. MOTES, Jasper Robinson, John Littlejohn, Mark Grant Blankenship.	2348. Sec. 5508 & 5509, R. S. U. S.

Come again the parties, by their attorneys, and the defendants being present in open court, the jury, after being in retirement for some time, come into open court — returns their verdict, whicl. reads as follows, to wit: "We, *rge* jury, find the defendants, Walter W. Motes, Columbus W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, guilty as charged in the indictment, Sepy. 29, 1898. We, the jury, ask the mercy of the court for the four defendants, Walter W. Motes, Jasper Robinson, John Littlejohn, Mark Grant Blankenship, and especially for John Littlejohn and Jasper Robinson.

JOHN M. SATTERFIELD, *Foreman.*"

TUESDAY MORNING, *Oct. 4th*, 1898.

UNITED STATES *vs.* WALTER W. MOTES, COLUMBUS W. MOTES, JASPER Robinson, John Littlejohn, & Mark Grant Blankenship.	Sec. 5509, R. S.

The defendants above named and each and all of them having heretofore been convicted by the verdict of the jury who
54 tried their cause on a former day of this term, and they being now present in open court, and each of them in turn, after being asked by the court if he had anything to say why the sentence of the court in accordance with law should not be pronounced upon him, says nothing, it is therefore, *om* obedience to the verdict of said jury and in conformity to law, ordered by the court that the said defendants, Walter W. Motes, Columbus W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, shall suffer imprisonment in the penitentiary at Raleigh, in the State of North Carolina, for life—that is, that each of said defendants, to wit, Walter W. Motes, Columbus W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, shall be imprisoned in said penitentiary at Raleigh, in the State of North Carolina, for the period of his natural life.

It is further ordered that said defendants pay the costs of this prosecution, for which execution may issue.

WEDNESDAY MORNING, *Oct.* 26, 1898.

UNITED STATES *vs.* WALTER W. MOTES, COLUMBUS W. MOTES, JASPER ROBINSON, John Littlejohn, Mark Grant Blankenship.	2348.

This cause coming on to be heard upon the petition of the above-named defendants for a writ of error, and after due consideration by the court, it is ordered that the prayer of said petition be, and the same is hereby, allowed, and the said writ of error is hereby directed to be issued in accordance with the prayer of said petition.

55 TUESDAY MORNING, *November 15th, A. D.* 1898.

UNITED STATES *vs.* WALTER W. MOTES, COLUMBUS W. MOTES, JASPER ROBINSON, John Littlejohn, & Mark Grant Blankenship.	2348.

This cause coming on to be heard upon the motion of the above-named defendants to postpone the execution of the sentence and judgment of the court heretofore imposed upon them, pending the appeal in this cause, and after argument of counsel and due consideration by the court, it is ordered that said motion be, and the same is hereby, refused and denied without prejudice to the rights of said defendants to renew said motion any time during the day.

UNITED STATES
vs.
WALTER W. MOTES ET ALS.

It appearing to the court that heretofore, on a former day of this term, the above-named defendants filed their petition praying, among other things, for a writ of error returnable to the Supreme Court of the United States, and it further appearing that the prayer of said petition has been allowed, whereupon, on the renewal of the motion of said defendants, it is now ordered by the court that the execution of the sentence heretofore imposed upon said defendants be, and the same is hereby, stayed and postponed pending said writ of error.

56 NOVEMBER 26TH, 1898.

UNITED STATES
vs.
WALTER W. MOTES, COLUMBUS W. MOTES, Jasper Robinson, John Littlejohn, & Mark Grant Blankenship. } Vio. Ses. 5508 & 5509, R. S. U. S.

Upon motion of the above-named defendants, it is ordered by the court that 10 days' further time be, and the same are hereby, allowed said defendants to present and file their bill of exceptions in this cause, and the same to be treated as filed in term time.

57 MARCH 2, 1899.

Court met pursuant to adjournment.

Present: Hon. Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, sitting and presiding under the orders of designation and appointment by the Hon. Don A. Pardee, circuit judge; Wm. Vaughan, U. S. attorney; J. W. Davidson, ass't U. S. attorney; D. N. Cooper, U. S. marshal, Esq., by his chief office deputy, James Bruce, and N. W. Trimble, clerk.

UNITED STATES
vs.
C. W. MOTES ET ALS. } No. 2348.

Ordered by the court that the motion of defendants for a new trial of this cause be, and the same is hereby, continued until the next term of the court.

(S'g'd) HARRY T. TOULMIN, *Judge.*

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, *or* between the United States of America and Colum-

bus Winchester Motes, alias Chess Motes; Walter W. Motes, William Robert Taylor, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, a manifest error hath happened, to the great damage of the said Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias *D* Dodge Blankenship, alias Dodger Blankenship, as by their complaint appears, *apperas*, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, within 30 days from the date hereof, in the said Supreme Court of the United States, to be then and there held, *and*, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 18th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

N. W. TRIMBLE,
Clerk of the Circuit Court of the United States for the Northern District of Alabama.

Allowed by—
JOHN BRUCE,
Judge Presiding.

Marshal's Return.

UNITED STATES OF AMERICA, *Nor. Dist. Ala., Sou. Div.*, } ss:

Personally appeared D. N. Cooper, U. S. marshal for said district, who, being duly sworn, deposes and says that he served a copy of the within writ of error on Wm. Vaughan, U. S. attorney for said district, on February 22, 1899, and mailed a copy of the same to the Attorney General, Washington, D. C., on February 22, 1899.

D. N. COOPER,
U. S. Marshal.

Subscribed and sworn to before me this 3rd of March, A. D. 1899.

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Nor. District of Alabama.

Returned and filed March 3, 1899.

N. W. TRIMBLE, *Clerk.*

59 *Citation.*

UNITED STATES OF AMERICA:

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 20th day of March, A. D. 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern division of the northern district of Alabama, wherein Columbus Winchester Motes, alias Chess Motes; Walter W. Motes, Jasper Robinson, John Littlejohn, and Mark Grant Blankenship, alias Dodge Blankenship, alias Dodger Blankenship, are plaintiff- in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18 day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN BRUCE, *Judge.*

Marshal's Return.

UNITED STATES OF AMERICA, } ss:
Nor. Dist. of Alabama, Sou. Div., }

Personally appeared D. N. Cooper, U. S. marshal for said district, who, being duly sworn, deposes and says that he executed the within citation by serving a copy thereof on Wm. Vaughan, U. S. attorney for said district, on February 22, 1899, and by mailing a copy of the same to the Attorney General, at Washington, D. C., on Feb. 22, 1899.

D. N. COOPER,
U. S. Marshal.

Subscribed and sworn to before me this 3rd day of March, 1899.

N. W. TRIMBLE,
Clerk U. S. Circuit Court, Nor. Dist. Alabama.

Returned and filed this March 3, 1899.

N. W. TRIMBLE, *Clerk.*

60 UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

I, N. W. Trimble, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete transcript of the

record and proceedings in the case lately pending in said court between The United States *vs.* Columbus Winchester Motes, alias Chess Motes, and others, as fully as the same does appear of record in my office.

Seal U. S. Circu Court, Nor. Dist. Ala.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in the city of Birmingham, in said district, this 18th day of March, 1899.

N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Nor. Dist. Ala., Sou. Div.

[Endorsed:] United States *vs.* Walter W. Motes, Chess Motes, and others. Transcript from U. S. cir. court.

Endorsed on cover: File No., 17,359. N. Alabama C. C. U. S. Term No., 257. Columbus Winchester Motes, alias Chess Motes, *et al.*, plaintiffs in error, *vs.* The United States. Filed April 10th, 1899.